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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,863	08/23/2001	Steven George Skinner	MV-532-L	9426

27201 7590 06/27/2005

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EXAMINER

GUYTON, PHILIP A

ART UNIT	PAPER NUMBER
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2113

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,863

Applicant(s)

SKINNER ET AL.

Examiner

Philip Guyton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1-3 and 6-10 is/are allowed.
6) ☒ Claim(s) 11-14 and 20 is/are rejected.
7) ☒ Claim(s) 15-19 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 4/21/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 12, lines 17-18 makes reference to "SCSI bus 23," which does not appear in the drawings. Appropriate correction is required.

Claim Objections

2. Claims 12-20 are objected to because of the following informalities: the claims make reference to "the method as in claim 11." It is suggested that the claims read "the computer-readable media as in claim 11." Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 14 recites the limitation " said installation form " in step (e) of the claim. There is insufficient antecedent basis for this limitation in the claim and thus renders the claim unclear.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11-14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,490,690 to Gusler et al. (hereinafter Gusler) in view of U.S. Patent No. 6,836,750 to Wong et al. (hereinafter Wong).

With respect to claim 11, Gusler discloses computer-readable media encoded with machine-readable computer program code, wherein, when a computer system executes the computer program code, the computer performs the steps of:

comparing a current configuration data to a previous configuration data in an initialization phase (column 11, lines 66-67 and column 12, lines 1-4);

comparing said current configuration data to a standard configuration data in an installation phase (column 11, lines 53-55);

displaying a set of results in a results phase (column 3, lines 1-2 and column 13, lines 8-12).

However, Gussler does not disclose expressly s method for providing data to restore clustering between a first server node and a second server node.

Wong teaches a computer system including at least two server nodes (figure 1), each of which can execute clustered server software (column 5, lines 1-15).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Gusler by including multiple server nodes executing server software as taught by Wong. A person of ordinary skill in the art would have been motivated to do so because Gusler specifies a server and client network system (figure 1) running a Unix environment. Thus it would have been desirable to have multiple server nodes executing clustering software in the invention of Gusler because Wong specifies the use of the Unix operating system (column 4, lines 58-63). Additionally, U.S. Patent No. 6,047,332 to Viswanathan et al. teaches that Unix-based programs are commonly hosted on computer clusters (column 1, lines 11-20).

Additionally, Gusler does not disclose expressly the step of comparing a set of operations to a standard clustering functionality in a diagnostics phase.

Wong teaches a diagnostic system for a computer cluster which compares selected system parameters with a defined threshold benchmark (column 2, lines 14-36).

At the time the invention was made it would have been obvious to a person of ordinary skill in the art to modify Gusler with the teachings of Wong. A person of ordinary skill in the art would have been motivated to do so because Gusler discloses a desire to recover from system failures through knowledge of system parameters (column 5, lines 36-43). Thus it would have been advantageous to incorporate the teachings of Wong in the invention of Gusler.

With respect to claim 12, Gusler discloses wherein said data to restore clustering is provided when clustering services fail (column 5, lines 50-55).

With respect to claim 13, Gusler discloses wherein said installation phase further includes the step of installing clustered software on said computer system (column 6, lines 35-39).

With respect to claim 14, modified Gusler discloses wherein said initialization phase includes the steps of:

gathering previously stored data for a first one of said server nodes (column 12, lines 50-52), and setting a flag to start with said installation phase if said previously stored data does not exist (figure 6, item 608).

gathering current state data for said first server node (column 11, lines 15-17) to specify the state of clustering (Wong – column 5, lines 53-67);

comparing said current state data to said previously stored data (column 11, lines 66-67 and column 12, lines 1-4), and setting said flag to start with said installation phase if discrepancies exist (figure 5, item 518).

gathering companion node data for said first server node (figure 5, item 508).

determining if said flag has been set to start with said installation form (figure 6, item 606), which will permit a user to specify data to use in installing clustering software (column 12, lines 45-49), and if so;

displaying an installation form (column 13, lines 12-18).

With respect to claim 20, modified Gusler discloses wherein said step of displaying said results phase includes the steps of:

allowing user to view all diagnostics (Wong – figure 5);

allowing a user diagnostics producing errors (Wong – column 10, lines 16-21);

allowing a user diagnostics producing errors or warnings (Wong – column 10, lines 49-64);

allowing a user to traverse a collection of diagnostics (Wong – figure 5);

allowing a user to save said collection of diagnostics to a log file (column 12, lines 13-17).

Allowable Subject Matter

8. Claims 1-3 and 6-10 are allowed.

9. Claims 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 4/21/05 have been fully considered but they are not persuasive. Applicant has argued that there is no suggestion to combine the references, Gusler and Wong. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Furthermore, the suggestion or motivation to combine the references may be gleaned from either the

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references themselves, or in the knowledge available to a person or ordinary skill in the art at the time of the invention (See MPEP 2143). In this case, Gusler specifies a server and client network system (figure 1) running a Unix environment. U.S. Patent No. 6,047,332 to Viswanathan et al. teaches that Unix-based programs are commonly hosted on computer clusters (column 1, lines 11-20). Thus, it would have been desirable to have multiple server nodes executing clustering software in the invention of Gusler, because Wong also specifies the use of the Unix operating system (column 4, lines 58-63), which would have enabled the teachings of Wong to be utilized by Gusler.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Guyton whose telephone number is (571) 272-3807. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PG
6/24/05

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